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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,163	07/12/2004	Walter Keller	3002	5205
7590 Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743				
EXAMINER				
AHMED, HASAN SYED				
ART UNIT		PAPER NUMBER		
1615				
MAIL DATE		DELIVERY MODE		
06/10/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/501,163

Applicant(s)

KELLER ET AL.

Examiner

HASAN S. AHMED

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4 and 12-19 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4, 12, 13, 18, and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of applicants' amendment and remarks, filed on 4 March 2009.

* * * * *

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 12, 13, 18, and 19 remain rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2006/0088494 ("Lendlein").

Lendlein teaches a composition used for recallable hair transformation (*see abstract*) comprising:

- natural zein (*see* paragraph 0021) at a concentration of 0.1 to 15% (*see* paragraph 0024), reading on instant claim 18;
- used for restructuring (*see* paragraph 0013), reading on instant claim 18;
- the 60 minutes (1 hour) of instant claim 19 (*see* paragraph 0073);
- the physical noxae of instant claim 4 (*see* paragraph 0013);
- the solution of instant claim 12 (*see* paragraph 0024); and
- a temperature range of 20-40 degrees Celcius (*see* paragraph 0015), reading on instant claim 13.

Lendlein explains that the disclosed method is beneficial for, "...providing a recallable hair transformation...enabling a high degree of recovery of a once-programmed hairdo." See paragraph 0003.

Regarding the concentration range recited in claim 18 and the temperature range recited in claim 13, in the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art," as is the case between Lendlein and the instant application, a prima facie case of obviousness exists. In re Wertheim, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); In re Woodruff, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to disclose a method for improving the condition of hair with natural zein, as taught by Lendlein. One of ordinary skill in the art at the time the invention was made would have been motivated to make such a composition because it is useful in providing a recallable hair transformation, enabling a high degree of recovery of a once-programmed hairdo, as explained by Lendlein.

* * * * *

Response to Arguments

Applicants' arguments filed on 4 March 2009 have been fully considered but they are not persuasive.

1. Applicants argue that, "...natural zein can be used as a starting material that is chemically modified to make a macromer having the formula A1-(X)n-A2, and that the macromer is in the composition taught by Lendlein. Consequently, Lendlein does not teach a composition comprising natural zein but rather a composition comprising a

macromer that can be made by chemically modifying natural zein, or parts thereof, to include chemically crosslinkable groups." See remarks, page 5.

Examiner respectfully submits that there is nothing in the Lendlein reference to indicate that the natural zein used by Lendlein is hydrolyzed. Regarding natural zein, claim 18 only requires that it be in the form of an unhydrolyzed protein; it does not preclude polymerization of the natural zein at points on the polymer that are reactive, chemically crosslinkable groups. Furthermore, Lendlein does not indicate that the reactive groups used with natural zein have been chemically modified. Lendlein explains that the reactive terminal groups or side chain groups of natural polymers may be present initially in the polymer (see [0019]). In any event, the natural zein disclosed by Lendlein has not been hydrolyzed; as such, examiner respectfully submits that the requirements of claim 18, as currently drafted, have been met.

2. Applicants argue that Lendlein teaches a method having a different purpose for the presently claimed method. See remarks, page 6, last paragraph.

Examiner respectfully submits that at paragraph 0030 of the instant application, applicants state that, "[t]he formulations suitable for the use of the agent according to the invention are preferably oxidative hair dyes, hair bleaching agents, oxidative hair-tinting lotions, hair-deforming agents such as permanent wave agents or hair defrizzing agents or hair-stretching agents and hair-smoothing agents or fixing agents." Each of these purposes would be recognized by a person of ordinary skill in the art as hair styling or cosmetic techniques, a purpose shared by the composition of Lendlein (see, e.g., [0003] of Lendlein).

3. Applicants argue that statements made by Lendlein at paragraph [0003] distinguish between the composition disclosed by Lendlein and the instantly claimed composition. See remarks, page 6, fourth bullet point.

Examiner respectfully submits that the language quoted by applicants refers to the impairing intervention of hair structure Lendlein refers to at paragraph 0001 with respect to permanent hair transformation using oxidation and reduction agents in chemical treatment of hair. As such, the composition disclosed by Lendlein is intended to protect the structural integrity of hair by avoiding the cleavage of disulfide bonds in the hair being treated, which is not inconsistent with the purposes suggested in the instant disclosure.

* * * * *

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HASAN S. AHMED whose telephone number is (571)272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward can be reached on (571)272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. S. A./
Examiner, Art Unit 1615

/Humera N. Sheikh/
Primary Examiner, Art Unit 1615